SINGLE BENCH

03

C.R. 1/05

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. No. 2785 Of 2005.

PETITIONER :- Vivekanand Gautam, son of Shri Mool Chand Sharma, aged 45 years, resident of Avanti Vihar, Near Vijay Chowk, Shanker Nagar, Raipur (C.G.).

C.R. No. 2928/25
Presented by Shri R. Bajpai
dated 30/6/25.

V E R S U S

RESPONDENT :-1. Bharat Sanchar Nigam Limited, Through General Manager, Telecom Division, Raipur, Auto Building, G.E. Road, Raipur (Chhattisgarh),

2. Assistant Labour Commissioner (Central), Anand Nagar, Raipur (Chhattisgarh),

3. Employees Provident Fund Commissioner, above Nav-Bharat Complex, Rajbandha Maidan, Raipur, District Raipur (C.G.).

उप जायुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
बिलासपुर तहसील केन्द्र

PETITION UNDER ARTICLES 226 OF CONSTITUTION OF INDIA

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... WP No. 2785/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10.11.2005 Shri Pankaj Agarwal, Advocate for the petitioner. Shri R.M. Solapurkar, Advocate for respondent No.1. None for respondent No.2. Shri Pradeep Saxena, Advocate for respondent No.3. The petitioner has preferred this writ petition under Article 226 of the Constitution of India questioning the legality & correctness of Condition No.2 of N.I.T. dated 8.6.2005 (Annexure P-3) issued by respondent No.1 herein whereby a condition has been imposed that the person having registration under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter shall be referred to as "the Act of 1952") shall be entitled to file tender document. Brief facts leading to filing of this writ petition are that respondent No.1 herein vide N.I.T. dated 8.6.2005 (Annexure P-3) invited tenders from the eligible registered contractors for the work of repairing of Faulty Electronic Push Button Telephone Instruments & Electronic Push Button Plan Instruments for Raipur circle and the estimated cost of the work is Rs.8,04,215/-. The petitioner herein is a registered contractor with respondent No.1 and certificate to that effect is Annexure P-1. The petitioner has a shop in the name & style	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of Gautam Electronics, having five persons in his establishment and certificate of establishment is Annexure P-2. The case of the petitioner is that registration under the Act of 1952 is necessary only when the contractor has employed 20 or more persons. The value of work for which N.I.T has been issued by respondent No.1 is Rs.8,04,215/-, but last year the tender was floated for Rs.5,65,000/- and the work was divided between two tenderers and work to the tune of Rs.1,18,000/- was given to the petitioner and work to the tune of Rs.60,000/- was given to other contractor. Therefore looking to the volume of work more than five persons at a time are not required to work, as such the condition imposed by respondent No.1 is arbitrary. It has also been mentioned in the petition that only Raipur circle is insisting for registration under the Act of 1952, whereas, in the tender of Ambikapur & Jagdalpur circle no such condition has been incorporated in the NIT. Ultimately, it has been prayed that Condition No.2 of the N.I.T. (Annexure P-3) be quashed.

Return has been filed on behalf of respondent No.1 in which it has been mentioned that as per provisions of the Act of 1952 respondent No.1 being the principal employer is liable to secure payment of Employees Provident Fund contribution (for short 'EPF') of its employees including the workers engaged through contractor for

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

its work. The condition in question has been incorporated in the NIT in order to ensure the compliance of provisions of the Act of 1952 and if the petitioner is having less than 20 persons in his establishment then he should seek exemption from respondent Nos.2 & 3.

Return has also been filed on behalf of respondent No.3 in which it has been mentioned that every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed requires registration. Respondent No.1- BSNL is an establishment to which the Act of 1952 has been applied w.e.f. 01.10.2000, therefore, respondent No.1-BSNL is under statutory obligation to enroll all direct and indirect employees employed by it on and after 01.10.2000. It has further been mentioned that the definition of employee given under Section 2(f) of the Act of 1952 includes the employees employed by or through contractor as well. As per provision of Section 8-A of the Act of 1952 the principal employer in respect of any employee employed by or through the contractor required to make compliance and in case any contractor is not registered under the Act of 1952 then it is the duty of the principal employer i.e. respondent No.1 herein to deduct the share of the employee and also to contribute equally and deposit the same in the account of employee concerned with the EPF.

SP/FS/2005 - 20,000

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —५—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	I have heard the learned counsel for the parties. Learned counsel for the petitioner submitted that the petitioner's establishment is having only five persons and the work for which NIT has been issued by respondent No.1 does not require 20 or more persons. Therefore, looking to the volume of work it is not necessary that the contractor must be registered under the Act of 1952 and as such, the said condition is arbitrary. He further submitted that respondent No.1 at the time of payment of contract amount shall be very well within its right to deduct the share of employee and contribution of contractor equivalent to the share of employee and can deposit the same with the EPF. He further submitted that in case of Ambikapur & Jagdalpur circle no such condition has been incorporated in the N.I.T. On the other hand, learned counsel for respondent No.1 argued that as respondent No.2 & 3 always insist for compliance of the provisions of Act of 1952, therefore, the condition in question has been incorporated in the N.I.T. Learned counsel for respondent No.3 submitted that his client is concerned only to the extent that compliance of the provisions of the Act of 1952 should be made.	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

42

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Having heard learned counsel for the parties, I have perused the relevant provisions of the Act of 1952.

Sub-section (3) of Section 1 of the Act of 1952 envisages that;

"*Subject to the provisions contained in section 16, it applies-*

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which (twenty) or more persons are employed, and

(b) to any other establishment employing (twenty) or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf;"

Therefore, only such establishments are required to be registered under the Act of 1952 where 20 or more persons are employed. The volume of work for which NIT has been issued is such, as mentioned by the petitioner in the petition, which does not require that an establishment should have at a time 20 or more persons, moreover, as mentioned in the writ petition, Ambikapur & Jagdalpur circle have not incorporated the said condition. Therefore, in view of the averments in the petition, I am of the opinion that the Condition No.2 of NIT requiring tenderer to be registered under the Act of 1952 even if having less than 20 persons is arbitrary, as the same is not in consonance with the provisions of Act of 1952.

As far as the question of recovery of share of employee and employer regarding contribution of provident fund is concerned, it is

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the duty of principal employer, in case where the contractor is not registered under the Act of 1952, to recover the share of employee as well as contractor and then to deposit the same in the account of employee concerned with EPF. Therefore, in order to ensure the compliance of provisions of the Act of 1952 even if the petitioner is not registered under the Act, respondent No.1 is entitled to recover the amount from the petitioner regarding contribution of employee as well as petitioner and then to deposit the same in the account of EPF of the employee. In case the petitioner herein fails to deposit that amount in that case respondent No.1 is entitled to recover the same at the time of making payment of contract amount. In the result, Clause-2 of NIT dated 8.6.2005 (Annexure P-3) making compulsory registration under the Act of 1952 even if the contractor is not having 20 or more persons in his establishment is hereby quashed and the petition is disposed of in view of the observations made in the preceding paragraph of this order. Consequently, M.(W.)P. No.2313/05 & I.A. No.5525/05 also stand disposed of. Certified copy as per rules. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan/-